IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Bail Appl..No. 4694 of 2007()

CRIME NO. 241/07 OF EZHUKONE POLICE STATION

PETITIONER/ACCUSED

GIRISH KUMAR S.,
SREEKRISHNA VILASOM, NEDUMANKAVU CHERRY,
KOTTARAKKARA.

BY ADV. SRI.V.PREMCHAND

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
EZHUKONE POLICE STATION, EZHUKONE.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4694 of 2007

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Dated this the 3rd day of August, 2007

O R D E R

Application for anticipatory bail. The petitioner is the sole accused in the crime. According to the prosecution, the alleged incident took place on 9.7.2007. The petitioner was allegedly teasing the adult daughter of the defacto complainant. The defacto complainant questioned that conduct. Enraged by that, the petitioner allegedly inflicted a grievous hurt on the defacto complainant with a dangerous weapon. Crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. According to the petitioner, the incident did not take place in the manner alleged at all. The petitioner alleges that the daughter of the defacto complainant had an affair with a married man and since the petitioner tried to deter the daughter of the defacto complainant from such unethical relationship, the defacto complainant got infuriated and allegedly showered abuses on the petitioner. In the incident which followed, the defacto complainant had suffered the injuries.

3. The learned Prosecutor opposes the application. He submits that there is absolutely no circumstance to indicate the weird theory advanced by the accused. It is artificial to assume that the defacto complainant would entertain such animosity against the petitioner, who tried to deter her daughter from illicit connection with a married person. This is not a fit case where the powers under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioner, submits the learned Prosecutor.

4. I find merit in the opposition by the learned Prosecutor. In any view of the matter, I am unable to find any reason to justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. Such jurisdiction is not to be invoked as a matter of course. No compelling reasons are shown to exist. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the

Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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